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BRANHAM *v.* ARTRIP.

Sept. 11, 1913.

[70 So. 390.]

1. Specific Performance (§ 128*)—Jurisdiction—Uncertain Contract—Damages.—Where equity could not grant specific performance of an alleged parol contract for the sale of land because of uncertainty of its terms, and complainant could obtain complete relief at law, the suit would not be retained for the purpose of awarding complainant damages for the value of improvements, less the rental value of the land.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 412-419; Dec. Dig. § 128.* 12 Va.-W. Va. Enc. Dig. 677; 14 Va.-W. Va. Enc. Dig. 944.]

2. Specific Performance (§ 128*)—Relief—Value of Improvements—Statutes—Application.—Code 1904, § 2760, provides that any defendant against whom a decree or judgment shall be rendered for land, when no assessment of damages has been made, at any time before the execution of the decree or judgment, may present a petition to the court for the allowance of the value of permanent improvements, less the rental value of the occupation of the land, and the court may suspend the judgment and assess the damages of the plaintiff and the allowances to the defendant for such improvements. Held, that such section applies only to actions of ejectment, or to cases in which a decree or judgment is rendered against a defendant for land, and cannot be invoked in a suit by an unsuccessful complainant for specific performance of an alleged contract to convey land.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 412-419; Dec. Dig. § 128.* 12 Va.-W. Va. Enc. Dig. 677.]

Appeal from Circuit Court, Dickenson County.

Bill by W. J. Artrip against W. J. Branham to restrain the prosecution of an action of ejectment and to enforce specific performance of an alleged contract for the sale of real property. From a decree in favor of complainant for the value of his improvements, less the rental value of the land, respondent appeals. Reversed.

Sutherland & Sutherland, of Clintwood, for appellant.

Skeen & Skeen, of Clintwood, and *Vicars & Peery*, of Wise, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.